

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board finds claimant did not suffer accidental injury arising out of and in the course of her employment.

The claimant did not testify at the preliminary hearing, instead the parties stipulated to the facts. As part of her employment claimant was assigned to work in Woodland Hills, California. On Saturdays claimant's workday was from 7 a.m until noon. On April 12, 2003, a Saturday, claimant worked until noon and then returned to her hotel. Claimant was not on call and was not scheduled to return to work until Monday. Approximately an hour and a half after she returned to her hotel, the claimant and a friend drove the company car to Malibu, California, to eat at a restaurant. The drive took approximately an hour.

After dining at the restaurant, the claimant and her friend decided to walk on the adjacent beach and take some photographs. Claimant climbed onto a rock to take a picture and was injured when she fell off the rock. It is undisputed claimant was not conducting any business for respondent on the trip to Malibu nor was there a business purpose for climbing the rock or taking pictures.

In determining whether claimant's accidental injury arose out of and in the course of her employment, the Board must consider whether the deviation by claimant was sufficient to find that claimant had abandoned the employer's business for personal reasons, thus causing a denial of benefits to be proper.

Substantial deviations from the business purpose of any trip may defeat a claim for workers compensation benefits.¹ In 1 *Larson's Workers' Compensation Law*, § 17.01, the majority rule is that an identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial. A common variation of this rule is the side trip, which occurs somewhere along the course of the main journey, when the main journey is intended as a business journey and a side-trip is of a personal nature. *Larson's*, § 17.03[3], describes the majority rule as until the side-trip is completed, the deviation for personal reasons would cause a denial of benefits.

Kansas has long recognized the principle that where the business errand is finished or abandoned and the worker sets about the pursuit of his own pleasure or indulgence, the

¹ *Kindel v. Ferco Rental, Inc.*, 258 Kan 272, 899 P.2d 1058 (1995).

employer is not liable for compensation.² Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.³

For an accident to arise out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.⁴ The requirement that the accident occur in the course of employment relates to the time, place, and circumstances under which the accident occurred and means the accident happened while the worker was working for the employer.⁵ In *Newman*, the Kansas Supreme Court held:

The two phrases, arising 'out of' and 'in the course of' the employment, as used in our workmen's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase 'in the course of' employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase 'out of' the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises 'out of' employment if it arises out of the nature, conditions, obligations and incidents of the employment.⁶

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case.⁷

Here, the business week had concluded and the claimant was admittedly not conducting any business for her employer. The respondent had not directed that claimant go to Malibu, California, for lunch. The claimant was on a clearly personal side trip and injuries sustained during this deviation from her business trip are not compensable. When

² *Woodring v. United Sash & Door Co.*, 152 Kan 413, 103 P.2d 837 (1940).

³ See K.S.A. 44-501.

⁴ See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973); *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); and *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

⁵ See *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 198, 689 P.2d 837 (1984).

⁶ *Newman*, *ibid.*, Syl. ¶ 1.

⁷ *Newman*, *ibid.*, Syl. ¶ 3, citing *Carter v. Alpha Kappa Lambda Fraternity*, 197 Kan. 374, 417 P.2d 137 (1966).

considering the entire record, the Board finds that claimant's April 12, 2003, accident occurred during a personal trip and that it did not arise out of and in the course of her employment with the respondent.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Steven J. Howard dated August 21, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2003.

BOARD MEMBER

c: Michael H. Stang, Attorney for Claimant
John M. Graham Jr., Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director